

NO. 21613

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

JAMES THEODORE WINSTON, MARGARET PATRICIA WINSTON,
SUSAN RAE WINSTON NOBLE and LINDA KAY WINSTON
ROBINSON, Plaintiffs-Appellees,

vs.

HERMAN BUCK KIN LEE, SAM MOI LAU LEE, CINDY S.Y. LEE,
DOWNTOWN PRODUCE INC., TING YIN CHOY SUEY, INC.,
Defendants-Appellants

and

HOWARD SUN HOON CHUN, LORRAINE KWAI FAH CHUN, and
EDWIN WAI CHUNG CHEUNG, Defendants-Appellees

APPEAL FROM THE DISTRICT COURT OF THE FIRST CIRCUIT
(CIV. NO. 1RC 96-9650)

ORDER GRANTING MOTION FOR RECONSIDERATION IN PART
AND AMENDING THE OPINION OF THE COURT
(By: Acoba, J., for the court¹)

Upon consideration of the motion for reconsideration filed by Defendants-Appellants Herman Buck Kin Lee, Sam Moi Lau Lee, Cindy S.Y. Lee, Downtown Produce, Inc. and Ting Yin Chop Suey, Inc. (Defendants-Appellants), and the record,

IT IS HEREBY ORDERED that the motion is granted in part and the summary disposition order filed on September 22, 2003 is hereby amended as follows (deleted material is bracketed and new material is double underscored):

¹ Considered by Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.

(1) **Last line on page 2:** judgment. See District Court Rules of Civil Procedure (DCRCP) [DCRCP] Rule 58

(2) **Footnote 4 on page 4:**

The April 14, 1998 final judgment did not purport to enter judgment on the March 31, 1998 order granting the Chuns' motion for summary judgment as against the Lees. [See supra note 9.] The April 14, 1998 final judgment stated that judgment was entered on the following:

(a) in favor of . . . [the Winstons] against . . . [Appellants], jointly and severally, in the amount of \$8,081.25 for attorneys' fees in connection with the litigation of possession issues, pursuant to HRS § 666-14, which amount was satisfied by payment from [the Chuns] . . . ;

(b) in favor of . . . [the Winstons] against . . . [Herman] separately for the total amount of \$2,545.41 (consisting of \$92.30 in cost[s] and \$2,453.11 in attorneys' fees) as sanctions;

(c) in favor of . . . [the Winstons] against . . . [Appellants], jointly and severally, for \$8,554.50 for additional attorneys' fees in connection with litigation of possession issues, pursuant to HRS § 666-14.

(Boldfaced font in original.)

(3) **Line 14 from the top of page 4:** jurisdictional requirements of [HRAP] Hawai'i Rules of Appellate Procedure (HRAP) Rule 4 cannot be changed by

(4) **Footnote 5 on page 4:**

[See supra note 12.]

The April 28, 1998 amended final judgment was the same as the April 14, 1998 final judgment, except that it added a section (d) and stated that judgment was entered as follows: "(d) in favor of . . . [the Chuns] and against . . . [the Lees] for \$17,646.84, consisting of the principal amount of \$14,117.47 and \$3,529.37 for attorneys' fees." Thus, unlike the April 14, 1998 final judgment, the April 28, 1998 amended final judgment additionally entered judgment in favor of the Chuns as against the Lees with regard to the March 31, 1998 order granting summary judgment in favor of the Chuns as against the Lees.

(5) **Line 16 from the top of page 5:** fees were erroneously awarded to the Winstons under HRS § [666-4] 666-14

(6) **Footnote 6 on page 10:**

[See supra note 13.]

Regarding entry of judgment, DCRCP Rule 58 is substantially the same as HRCF Rule 58, except that HRCF Rule 58 additionally provides as follows: "Every judgment shall be set forth on a separate document." Thus, in the circuit court, a judgment must be set forth on a separate document, but in the district court, it need not be a separate document.

An amended summary disposition order, incorporating the foregoing amendments, will be filed. The Clerk of the Court is directed to provide a copy of this order and a copy of the amended summary disposition order to the parties and notify the publishing agencies of the changes. The Clerk of the Court is further instructed to distribute copies of this order of amendment to those who received the previously filed summary disposition order.

DATED: Honolulu, Hawai'i, November 12, 2003.

Philip J. Leas and
James H. Ashford (Cades
Schutte LLP), on the
motion for defendants-
appellants.

FOR THE COURT:

Associate Justice